

# THE ADVOCATE

santa clara university school of law  
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**Responsibility**  
*Inside:*  
**Santa Clara Wins ICC Moot**  
**Law Alumnus to Head CIA**  
**Ruined for Life:**  
**El Salvador Immersion**



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Cover photo by Daniel Zazueta. Photo of SCU student in front of *El Monumento a la Memoria y la Verdad* in El Salvador.

“In *times like these*, men should utter nothing for which they would not be *willingly responsible* through time and eternity.”

~Abraham Lincoln

## *From the Editor:*

*We're celebrating Lincoln's birthday this week. He must have taken his responsibilities seriously, because his words and his legacy have echoed through the generations.*

*I'm personally feeling pretty overwhelmed with my responsibilities right now, which seems silly in comparison to the other responsibilities I saw coming to light in the compilation of this issue.*

*Obama has the responsibility of keeping his promises to the nation. Leon Panetta has the responsibility to make Santa Clara proud. The Administration is responsible for answering our every grievance and complaint.*

*We all have responsibilities in our personal lives, to our families and our loved ones. I am feeling a bit overwhelmed with my responsibilities on campus, not only in classes but in the various organizations I'm involved with at Santa Clara. But coming back from El Salvador, I feel a huge responsibility to the people I met and even the future lives I want to effect. I feel a responsibility to use not only my time here wisely, but to figure out how I'm going to use my law degree to make a big difference.*

*This is the time when we are making the important decisions. Whether it's summer employment or even how to spend spring break, our responsibilities weigh heavily upon us. But we are blessed to have them. It means we have the power to make a difference and affect people in a positive or negative way.*

*I'm going to try my best to be mindful of my responsibilities while remembering not to take myself too seriously. We also owe it to ourselves to stay healthy and sane.*

*Until next time, enjoy.*

*Caitlin E. Robinett*

## THE ADVOCATE

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# NEWS

## Santa Clara Law Students Best Yale to Win International Criminal Court Moot

Joe Wright  
Managing Editor

After a long weekend in sub-freezing New York, three Santa Clarans returned to sunny California victorious after beating four Yale Law students in the final round of the North American qualifier for the International Criminal Court Trial Competition. The winning trio—Adam Birnbaum (3L), Brandon Douglass (2L) and Ann Marie Ursini (3L)—fly to The Hague, courtesy of the Dutch government, on February 15th for a six-day trip that will culminate in the global round of the ICC Trial Competition. In the Netherlands, the team will compete against students from schools such as the London School of Economics, the University of Hong Kong, the University of Cairo, Nalsar University (India), and Pretoria University (South Africa), as well as the runners-up from the North American round, the Yalies.

Adam Birnbaum was named Best Oralist in the second round for his role as Defense Counsel. Brandon Douglass was named Best Oralist in the third round for his role as Victims' Advocate and was also named Best Oralist in the final round for his Defense rebuttal.

The team credits Santa Clara Law's extensive international law curriculum and the required second-year course, Appellate Advocacy, for its success. Both Birnbaum and Ursini participated in Santa Clara's study abroad program in The Hague after their 1L year and also completed the International Law and International Criminal Law courses. Douglass says he "learned [international law] through osmosis" from his teammates. "We were able to think two steps ahead of a lot of our competitors because of the background provided by [Santa Clara]," says Birnbaum.

A highlight for Ann Marie Ursini was during the award ceremony when President of the American Society of International Law, Elizabeth Andersen, discussed her role in assembling an ICC advisory team for President Obama. At present, the U.S. is not a party state to the ICC; former-President G.W. Bush openly criticized the ICC during his tenure and formally withdrew U.S. support for the international body in 2002. "I'm glad we did very well in the competition, but I think it's also im-



COURTESY OF SANTA CLARA UNIVERSITY

*ICC Trial Competition winners, Douglass, Birnbaum, and Ursini.*

portant that we had the opportunity to be in this arena, to meet these people, and work on these issues at a time when the [the new Obama administration] is considering whether it's worth joining the ICC," says Ursini. Santa Clara and Yale will be the first American universities to participate in the International Criminal Court Trial Competition in The Hague.

The competition in New York was hosted by Pace University School of Law in White Plains, NY. Birnbaum, Douglass and Ursini flew on a red-eye from San Francisco to JFK on Thursday, arriving at 7:00 a.m. on Friday January 30. Adam Birnbaum, an NYC native, took the team to a diner in his old neighborhood of Briarwood, Queens where the group waited out the morning traffic. The trio then made the 30-mile drive to White Plains where they were greeted with a reception dinner and a warm welcome from most of the fellow participants. "We made the determination that Yale was Yale almost immediately," said Douglass. When asked to explicate, Birnbaum interjected, "they exuded a certain superior indifference...they didn't sit with anyone else and they didn't talk to anyone else."

The moot began promptly at 7:30 a.m. on Saturday. The competition consisted of three rounds, with competitors arguing as the Prosecution, the Defense, and as the Victims' Advocates. The competition is modeled after ICC trials, based in The Hague, in which the victim participates in proceedings along with the prosecution and the defense. To advance to the North American qualifying round in White Plains, each team submitted three memorials (briefs). The three memorials included one from each perspective of the three parties in the ICC case. The Santa Clara team was one of ten teams selected to compete in New York. After a full day of arguments, the judges announced that Pace, Yale, and Santa Clara would continue on to the final round the next day. Birnbaum, Douglass, and Ursini finished first in the final round, followed by Yale, then Pace. A video of the final is forthcoming and a link will be available on the Pace Law School website.

The trio will do a practice round on Tuesday, February 10 from 12:00-1:15 p.m. in the Panelli Moot Court Room with a panel of faculty judges, including Professors Steinman, Van Schaack, and Scott.

# Meet the New Bosses

## Obama Orders Closing of Gitmo

Jason Tauches  
Staff Writer

President Barack Obama wasted no time to signal a major shift in US foreign policy during his first day in office. Among his first acts as President, Obama filed a request to stay detainees' Habeas Corpus proceedings in Federal Court; suspended the prosecution of Guantanamo detainees in military commission proceedings; shut down the CIA's secret network of prisons and signed executive orders closing Guantanamo within a year, establishing a commission to research options on where to send detainees, and ending the application of abusive interrogation techniques on detainees.

Both Republican and Democratic lawmakers had much to say about the orders. Republican lawmakers who opposed Obama's actions say that this will expose America to terrorist attacks and allow Guantanamo detainees to be released into America.

Republican Representative Peter Hoekstra of Michigan stated that the reversal from Bush's policies, "places hope ahead of reality — it sets an objective without a plan to get there."

Retired Admiral John T. Hutson, stated that closing Guantanamo and ending the use of "enhanced" interrogation techniques, "is the right thing to do morally, diplomatically, militarily and constitutionally, but it also makes us safer."

By foregoing the tactical benefit of information gleaned through "enhanced" interrogation techniques, some feel Obama is focusing on America's reputation. "The United States intends to prosecute the ongoing struggle against violence and terrorism and we are going to do so vigilantly, we are going to do so effectively, and we are going to do so in a manner that is consistent with our values and our ideals," the President

Obama said.

The President stated that interrogators of detainees would abide by the Army Field Manual for now. The interrogation order establishes a task force to determine whether the Army Field Manual techniques are an "appropriate means of acquiring the intelligence necessary to protect the nation."

Many questions remain however, as to the both the implementation and ramifications of these actions. The administration has just begun to review the files of the approximately 245 detainees. The most pressing issues are what to do with the detainees once Guantanamo closes, and whether the prohibition against "enhanced" interrogation techniques remains in effect after the interrogation task force publishes its findings. This problem is compounded by recent knowledge that two former detainees that were released in Saudi Arabia have since become members of Al Qaeda in Yemen.

Most recently, the Obama administration has received pushback on its policies by a military commission Judge. Col. James L. Pohl. Judge Pohl refused to delay the February 9th hearing of Abd al-Rahim al-Nashiri, who is alleged to be the chief planner of the attack on the Navy destroyer Cole in 2000. How the Obama Administration deals with this challenge and others in the war on terror remain to be seen. Only one thing is certain: President Obama's actions indicate a major shift in the direction in the US's strategy for fighting the "war on terror."



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Obama announces Panetta as his CIA Director Nominee

## Santa Clara Grad Set to Head CIA

Marina Wiant  
Layout Editor

On Thursday, February 5, 2009, Leon Panetta faced questioning from the Select Committee on Intelligence, as the beginning of his Senate confirmation hearing. Panetta, a 1963 graduate of Santa Clara University School of Law, is expected to be easily confirmed by the Senate, and will work closely with Janet Napolitano, another Santa Clara graduate, who has been confirmed as Director of Homeland Security.

At the hearing, Panetta outlined three areas of priority. First, he wants to get the professionals to analyze precisely their intelligence, the quality and credibility of that intelligence, any gaps that exist, and what is being done to fill the gaps. Second, he wants to focus on improving intelligence coordination and collaboration. Third, he wants to rebuild a close working and consultative relationship with Congress.

Panetta left open the possibility that the Agency could seek permission to use interrogation methods more aggressive than President Obama

had authorized last month. Although he gave no specifics, he said that the Agency would always abide by the law and that he would "seek the same kind of assurances that [terror suspects] will not be treated inhumanely."

Panetta also stated that CIA officers whose interrogations may have crossed the line into torture, such as waterboarding, would not be prosecuted because they were acting lawfully at the time.

Panetta's nomination came as a surprise to many, but is in line with the Obama administration's early divergence from Bush policies. Panetta has long been a spokesperson against torture and the use of fear tactics. In a 2008 piece for the Washington Monthly, Panetta wrote, "We cannot and we must not use torture under any circumstances." He argued that our Constitution clearly guarantees that "every individual has an inherent right to personal dignity, to justice, to freedom from cruel and unusual punishment," and that these beliefs

(continued on page 5)

(continued from page 4)

cannot be suspended in the name of national security.

Panetta's stance on torture and his strong history of being an even-tempered and competent manager are some of the reasons his nomination came as good news. "He is so respected in Congress and in the community, and runs [the Panetta Institute for Public Policy] like a tight ship," says David Lee, a former research fellow at the Institute. "He has all the background for [the position]; there's nothing more he could have done."

Others have been more critical of the nomination, most notably former Vice President Dick Cheney, who warned that there is a high probability that terrorists will attempt a catastrophic nuclear or biological attack

in coming years. He recently stated, "When we get people who are more concerned about reading the rights to an Al Qaeda terrorist than they are with protecting the United States against people who are absolutely committed to do anything they can to kill Americans, then I worry."

While Panetta is not a traditional "intelligence professional," he cites his time as Bill Clinton's White House as Chief of Staff, as a member of the Iraq Study Group, as a congressman, and as an intelligence officer in the Army as some of his qualifications. Once confirmed, Panetta will step down from his many board member positions and from teaching at Santa Clara University. The Panetta Institute will continue its fellowship program with Santa Clara's School of Law under the directorship of Sylvia Panetta.

## Corporate Greed Hits the Makeup Counter

Nikki Corliss  
Guest Writer

Hundreds of consumers flocked to malls around the country on Jan 20 for some unusual freebies: makeup and perfume. First come, first served. One per customer. That's how several stores, like Macy's, Neiman Marcus, and Nordstrom, elected to settle a 2003 California class-action suit.

The result? Without admitting any wrongdoing, the department stores agreed to give away \$175 million dollars worth of high-end beauty products to consumers that bought certain brands of cosmetics between 1994 and 2003.

The suit alleged that makeup manufacturers and sellers engaged in price fixing by agreeing to sell products only at suggested retail prices and by refusing to sell products at a discount. The suit also claimed that sales and promotions were coordinated to ensure there would be no competition between stores.

Although the giveaway was to last no longer than 7 days, it ended well before then as stores quickly ran short on supplies. No receipts were necessary to obtain the products, but consumers were asked to fill out a form confirming their purchase between particular dates.

This unique settlement is not a new solution either. Often, distributing products can be less expensive for companies settling suit. However, the companies will be paying \$24 million in attorney's fees, along with signing a court order that

prohibits them from engaging in price-fixing and certain marketing techniques.

While some of the women (and men) that attend-

ed the giveaway thought the settlement was an effective check on corporate greed, others wondered whether the spectacle would actually deter future illegal marketing practices.



PHOTO BY MARINA WIANI

Macy's at Valley Fair Shopping Center.

## BART Investigation

Nikki Corliss  
Guest Writer

Nearly a month after the fatal Oakland station BART shooting, the accused police officer, Johannes Mehserle, claimed the incident was an accident while testifying before an Alameda County Superior Court. Mehserle's attorney, Michael Rains, explained that just before Mehserle shot unarmed Oscar Grant, 22, in the back, Mehserle had told a nearby officer that he was going to "tase [Grant]."

However, at the close of the hour-long hearing, Judge Morris Jacobson seemed unconvinced. This "appears to me to be a change in his story," Jacobson said. "He has a willingness to add to the story, to change the story, to make up something that's not true to avoid consequences." Nevertheless, Jacobson did not believe that Mehserle posed a public menace, and set bail at \$3 million dollars. Jacobson ordered the preliminary hearing of the evidence of the case to begin March 23.

Meanwhile, the New Year's Day shooting has prompted investigators to question the actions of officers at the scene. Police let a train full of witnesses at the Fruitvale station depart after watching the shooting and made little attempt to contact the witnesses at later stations, according to a Chronicle investigation. Furthermore, none of the seven officers at the station immediately reported the officer-involved shooting. Police also failed to establish a full investigation into the incident until an amateur video of the shooting surfaced on a local television show on Jan 23.

In response to the arrest, five of Grant's friends asked the transit agency for \$1.5 million this week, claiming that their civil rights were violated when officers detained them at the station. This suit follows the \$25 million dollar claim filed by Grant's family members.

\*Caitlin: The Dean of the Jesuit University in San Salvador, Dean Brackley, perfectly expressed the sentiment of our group. "In traveling to the third world, you get your heart broken, you fall in love, and then you're ruined for life," he said.\*

**Daniel: Dawn broke over the horizon like a thin pink neon line and I could faintly make out a coastline below. It took me a second to realize the plane was just about to make the journey from the Gulf of Mexico over mainland Mexico into Central America. As the sun rose I followed the mountains, valleys, and rivers from Mexico into Guatemala and El Salvador. I contemplated the history and changes in civilization below with each changing landscape. I thought of the places in Mexico and Guatemala I had been and wondered how different El Salvador would be.**

\*It's hard to figure out where to begin when talking about the trip. It's almost cliché for trips like ours to be life changing, but there's a reason for that. Too often we get so wrapped up with life at home that we don't take a minute to step out of our lives to try to offer perspective on where we come from and how we influence the rest of the world.

Our values, our customs, our clothing, and our music has a force in El Salvador. But while little girls are dressing like Britney Spears, and *The Doors* are on permanent rotation, the Salvadorans are uniquely their own. They are a people unlike any I have ever met. Their warmth, love, faith, and determination is as infectious as it is obvious. It is hard to explain to someone who hasn't experienced it, but I got the sense that Salvadorans really look at you. I never felt like someone was greeting me with indifference and obligation. Every Salvadoran I met really looked at me, right inside of me, when they spoke. Their embraces were some of the tightest and most sincere I have ever met. They left me wondering, why me? Why are you kissing my cheek and enveloping me in an embrace when *you're* the one sharing the most tragic stories I have ever heard. What's worse, my country funded the travesty in your country, and you aren't showing me the least bit of contempt.\*

# Ruined For

## TWO ACCOUNTS OF

The landscape was dry and the terrain looked unforgiving beneath our wings. We made our descent along the Pacific coast after passing several large stands of volcanoes of a seemingly prehistoric landscape. I noticed winding rivers draining into the ocean from mangrove rimmed wetlands and the waves gently rolling in long stretches to the shore.

The plane touched down on a runway that seemed to be carved out of fields of sugarcane. A crowd of curious faces stared at us as we passed through customs into the throngs of people eagerly awaiting relatives from El Norte. The morning air was tepid at 8am with hints of a sultry afternoon to come. My lungs and skin welcomed the moisture in the air. Black birds sang from palm trees while my two companions and I jumped into a taxi with Egalberto. "Nosotros vamos a la playa hombre."

\*The country is beautiful and rich. With beaches, volcanoes, Mayan ruins, and Colonial Towns, it's a wonder why tourists haven't started taking over like they've done in other Central American countries, like Costa Rica. But the people in El Salvador are even more beautiful. I did not meet one person who was not helpful and kind. But all that beauty, love, and their undying faith starkly contrasts with the stories of horror and heartbreak that we heard. On our trip we met everyone from the President of the Supreme Court to the poorest villagers, with not even the land beneath their feet to call their own. But the people are united by a recent and sometimes reoccurring tendency towards violence and bloodshed.\*

*photo by Caitlin Robinett*

# Life:

## OF THE EL SALVADOR IMMERSION TRIP

BY: CAITLIN ROBINETT AND DANIEL ZAZUETA

I have traveled extensively through Latin America and excitedly welcomed the familiar landscape of agriculture, cinder block shacks, coconut vendors, and stray dogs along the roadway. In my travels, however, I was always struck by the lack of environmental consciousness in the countries I visited. I thought people of little economic means would surely take care of the land they live in such close proximity to. Alas, the raw sewage, grey water, trash, and soot-spewing vehicles told me environmental concerns were not on the top of the list in the struggle to survive.

We passed several rivers on our way to Playa El Tunco, a sleepy little surf spot on the coast thirty minutes away. Since memories of the disastrous state of water resources in Latin America remained clear in my mind, I anticipated no less from El Salvador. The rivers, as expected, were choked with trash and filled with suds from the women washing clothes in the early morning sun. Every household along the undeveloped stretch of coastline emptied its sewage and gray water straight into the rivers that carried it out to the ocean. An environmental policy of "out of sight, out of mind" carries with it the grave consequences of disease and catastrophe.

\*It felt totally overwhelming at times that these kind people all had stories in which they witnessed, participated in, or were victims to the kind of violence that I had never even imagined possible. In the United States, the topic of torture has been brought up in the recent past. But you never imagine what that could exactly mean, what kind of atrocities we're capable of committing as human beings. But with that unbelievable, unimaginable

ability inside of us, the Salvadorans are proof that we also have an unimaginable power to accept and forgive.\*

As I sat on the beach sipping from a bottle of Cristal, one of El Salvador's purified water companies, I thought about how expensive it would be for a nation to rely on bottled drinking water as opposed to fixing the water system. The problem is that not only the drinking water is contaminated in El Salvador, but also the water used to grow produce and raise livestock, not to mention the massive influx of untreated wastewater that affects marine life. The problem is perhaps more than anyone wishes to think about because it involves a complete overhaul of entire infrastructure of the country, legal and corporeal. It is a problem that can be easily ignored with enough bottled water and serene landscapes. From the tranquil lagoon that trickled into the steady crash of waves on the breathtaking Pacific shore it wasn't clear that a silent killer lurked in the flowing waters of this small Central American country. A closer look, however, exposed the true weakness of an already fragile nation: water.

\*It's not over for them. The war is too recent and the government's oppression still too real for them to fully move on. But we can do something to help. We can start paying attention to the parts of the world that we neglect. We can listen to their stories and learn from our mistakes so that we can share in the motto, "nunca mas" with a people that are not so far away or different from our own.\*

# <sup>8</sup> The Largest Ponzi Scheme in History

Mark Jansen  
Guest Writer

# FEATURE

The Ponzi scheme is a centuries old fraudulent investment scheme designed to entice new investors by offering them unusually high short-term profits. Yet, never in recorded history, has such an enormous sum been stolen from investors. Bernard Madoff's infamous name will likely grace the history books, as will the estimated \$50 billion dollars he swindled via his investment firm Madoff Securities.

A few months ago, no one would have believed that Madoff, a household name amongst elite New York society, had been running a Ponzi operation for the last 30 years. He was arrested on December 11, 2008, and charged with security fraud. His arrest has sparked mass outrage from national and international investors. Individual investors were not the only ones affected, charities devoted millions of dollars to Madoff Securities and international banks and hedge funds may face bankruptcy as a consequence of their investments. Even high profile Hollywood celebrities were not immune from the disaster. Steven Spielberg, Jeffrey Katzenberg, Kevin Bacon, Kyra Sedgwick and John Malkovich have reportedly fallen victim to the Ponzi scheme.

One client tragically committed suicide. René-Thierry Magon de la Villehuchet, who invested \$1.4 billion on behalf of his aristocratic European clients, was found dead in his office on December 23.

Madoff's system was bound to collapse. His scam, like all Ponzi schemes, was structured so that the earnings outweighed the payouts to investors. In order to keep up high returns to investors, new shareholders are sought, and more money is necessary to perpetuate the scheme. Recent economic turmoil led Madoff's clients to request that he return their initial investments, as a consequence Madoff Securities began to hemorrhage money. Unable to raise enough cash to cover his losses Madoff was eventually forced to reveal the scheme to his employees. His staff subsequently reported him to the Securities and Exchange Commission.

Madoff's victims are now demanding to know how the SEC managed to overlook this three decade long fraudulent practice. Over the years industry analysts reported inconsistencies in Madoff securities' returns. The SEC and other regulatory bodies investigated the company and made numerous

inquiries over the course of the last decade. Each time, Madoff was cleared of any wrongdoing. Madoff is currently under house arrest, and his attorneys have arranged for an extension in the indictment proceedings. His assets have also been frozen.

The FBI is currently sifting through warehouses full of documents looking for evidence to incriminate Madoff and to determine the most efficient method for recovering some of the investments. Suits by both the SEC and investors have been filed against Madoff. Under SPIC guidelines each investor is entitled to \$500,000 "for cash or securities missing from their accounts." The process of locating Madoff's accounts and compensating investors is estimated to take several years.

The news of Madoff's scheme comes at the worst of times as thousands of people around the country struggle to keep their jobs and homes. Worst of all, in a shocking show of contempt for all of the investors he harmed, Madoff reportedly tried to mail millions of dollars worth of jewelry, watches, and checks to relatives.

## Obama's Pricey Inaugural Balls

Dominic Dutra  
Staff Writer

On January 20, Barack Hussein Obama was sworn into office as the 45th President of the United States of America. His unprecedented election was unsurprisingly coupled with an unprecedented celebration. Online traffic following the event reached epic proportions, causing BBC's video stream to go down, and resulting in over 136 million page views at CNN.com. International TV viewership rivaled that of the opening ceremonies for the Olympics, and nearly doubled the viewership for Bush's 2005 inauguration. All told, over one million Americans ascended into Washington D.C. for an inauguration that was undoubtedly the grandest, and most expensive party the country has ever seen.

Obama's election to the presidency was one of the most historically significant events in U.S. history, and the fan-fare that went with it doubtfully surprised anyone. Yet in the face of our country's current economic crisis, the grandiosity of the event has drawn much criticism, especially from right-wing proponents, that an unnecessary amount of resources were used to put on the event.

Notwithstanding the events starting on Sunday the 18th, which included the massive "We Are One" concert at the Lincoln Memorial, and the Martin Luther King Jr. Day festivities on Monday, the total cost of the inauguration reached over \$170 million.

The cost of Obama's inauguration dwarfed Bush's from 4 years ago of \$42.3 million (not including security). Obama's inauguration committee raised \$45 million, but the vast chunk of over \$100 million came from federal and local governments, and has left many pundits wondering about his message of fiscal responsibility at such a precarious time.

To his defense, the sheer magnitude of the celebration and the anticipation for the event, along with the historic nature of the festivities created a situation that can't be fairly compared to inaugurations of years passed. The combination of the ascent of our first African-American President, and the descent of one of the least popular presidents in U.S. history created a climate fit for the raucous shindig that transpired in D.C. The sheer volume of visitors and attendees also required a staggering amount of security, which included (assuredly at high cost), 1,000 FBI agents and at least 5,000 military police and national guardsmen. At the same time it is also fair to examine the flipside of the argument.

Given the state of the economy and the huge mandatory costs of the inauguration, would it have been more responsible had Obama and his inauguration committee tried to re-organize or cut some of the "unofficial" and "unnecessary" events? For instance, outside of the traditional inaugural ad-

dress, luncheon and parade, there were also 10 official inaugural balls that night. Understandably, these events were likely fundraisers as well as a type of "thank-you" for contributors and supporters, but it seems like the President missed a golden opportunity for change. President Obama could easily have chosen to forego these gratuitous events, and use it as a platform to pledge for more responsible spending, and put an end to some of the extravagant expenditures from the elite which so many Americans have shown disdain for. This rings even more true following his recent denunciation of the \$18.4 billion in Wall Street bonus figures as "shameful." While a small bash at the White House may have disappointed or even enraged the few thousand supporters and donors who would have been excluded from the celebration that night, it would have upheld his message for change and fiscal responsibility, and any supporter of his assuredly would have respected that.

Whether the costs of the celebration in Washington D.C. were warranted or not; whether the extravagant balls and galas were consistent with his message of change, or signs of 'politics as usual,' it is clear that President Obama may have fallen short of his campaign promise on his first night in office. Let's hope it's just a small chink in the armor of America's new shining knight.



# OPINION

## *The Rumor Mill*

Susan Erwin

Senior Asst. Dean of Student Services

Thanks to everyone who participated in the recent Town Hall Forums, and thanks to the SBA for organizing everything (and feeding us)! We covered a lot of topics, but didn't get to everything. Below is my attempt to speak for all of us, and answer your questions.



### 1. Why do we have to use GroupWise email?

Asst Dean Allan Chen assured the audience that the University and the Law School are always investigating the new options. He didn't have time to say more on Monday, so I asked him for more details. He says, "E-mail and calendaring is one of the key areas for which we rely upon the university's services. In this case, they use Novell, which means GroupWise. There is also a tight connection between eCampus ID's and Novell ID's, which are in turn connected to GroupWise accounts. As any technology department would do, both Law Technology and the University Central IT continue to watch various trends such as out-sourcing e-mail and calendars via something such as Google Apps for Education. There remain some specific concerns, however: Integrating Google Apps is a very large task. We'd have to make sure that every aspect of our current system - all email addresses, all calendar entries, etc - moved into Google. It's certainly doable, but it's a significant opportunity cost. System outages are slightly more frequent. Google has had 4 outages in the past 1.5 years, whereas SCU has had none in that same time frame. As more and more schools move onto Google's servers, this potentially increases the chances of outages, which then affect a much larger number of users across the globe. Moving our data off of our servers and infrastructure is always a big shift in strategy. Moving to another company to provide e-mail and calendaring can save money, without question. But it comes at the cost of having user data housed somewhere else. That's something that has to be considered."

### 2. Have we looked into having one portal for all on-line functions, to decrease the number of passwords we need to use? We have looked into it, we continue to work on it, and hope to be able to find a solution. We are all in the same boat here, and equally frustrated.

### 3. What efforts has the school been making to ensure diversity in faculty – especially female faculty? To answer this, I'm going to quote directly from our 2008 Self Study Report: "The Law School faculty is quite diverse in its academic expertise, its racial and ethnic composition, and in its values, political views, and ideas. . . .The recent appointments of tenured and tenure-track faculty have contributed substantially to this diversity. The Law School has hired eleven new faculty members in the past five years, and six of those new faculty have been members of racial or ethnic minority groups. Six have been female."

### 4. Are there budget cuts being examined for the law school? Dean Polden, in his update to the student organization Council of Leaders, explained that the economic downturn has impacted the university and the law school. As we are heavily tuition dependent, the extent of that impact won't be known until we know the size and financial need of the incoming class. We are, of course, trying to be prepared. The general strategy right now is to find ways to reduce our budgets without impacting student academic or service areas. To begin the process, the University President has announced a plan to

freeze the salaries of all faculty and staff for this year. Dean Polden assured the group that he would keep us all posted.

### 5. What additional info/news/projections have we heard regarding the hiring market? Here are Asst Dean Huebner's observations: "The current economic climate has had an impact on lawyer headcount and will have an impact on current recruiting. The environments in which we are observing the greatest amount of pressure from the economy are large law firms and California state and local governmental entities. There has been relative stability in mid-size firms and small firms. Additionally, not all practice areas have been negatively impacted by the economy. Practice areas which are counter-cyclical such as: bankruptcy, loan modifications and mortgage workouts, labor and employment, health care, insurance defense, energy, intellectual property, and civil litigation are thriving. Additionally, we anticipate that the U.S. government will enhance their status as one of the nation's largest employers. Our advice to our students in light of the current economy is to become "practice ready," be flexible and search broadly. Additionally, take advantage of as many opportunities as possible through LCS and other programming to build your strategic relationships with SCU alumni and friends of the law school."

### 6. Lots of questions about library hours. Mary Hood, the Executive Director, invites you all to check out the Library Hours page in ClaraNet. The survey file shows library hours for all ABA law schools in California. <http://claranet.scu.edu/eres/coursepage.aspx?cid=196&page=docs#> She invites you to please let the library folks know if you have questions or comments about library hours.

### 7. And finally . . . there was a question about the quality of coffee at the University. Jason Landau, the Assistant General Manager, says, "We use Barefoot Coffee, a local roaster that has won numerous awards (and places in the Top 5 of best roasters in the country year after year). All the coffee and espresso is either fair trade or direct trade. We also do constant trainings with the staff to ensure best practices. Obviously, we don't want any guest upset or disappointed. As such, I will ask our trainers to recheck the training program and be more aggressive with their spot checks."

In closing, I would like to comment on the tone of some of these questions. While most of the questions were sincere and thoughtful, some weren't. For example, upon receiving the questions from the SBA, I forwarded the coffee question to everyone at Bon Appetit to seek their input. It was only later – when I took the time to read the whole email – that I realized the author had suggested that the coffee was being brewed by people too dumb to do it correctly. I immediately sent an email to the folks at Bon Appetit and apologized for not editing the email. (Not one of my better moments.) A very small number of the other questions implied that we were uncaring and uninformed. Let me get up on the soapbox and break out the pom-poms – We are all a part of this community! We are all working toward the same goal of making this the best law school that we can! We are all deserving of basic civility and respect! We are all professionals and should behave as such. We are SCU Law! We are good enough, we are smart enough, and dammit, people like us! I am very proud to be a part of YOUR community and I hope that you are too.

Heard a good rumor lately? Contact [serwin@scu.edu](mailto:serwin@scu.edu).

# Letters to the Editor: Responses to last issue's article, *Asst. Dean's Support of Prop 8 Sparks Controversy*

**Dear Editor:** Homosexual couples, and many others, believe they should have the right to marry. They view this to be morally right and believe it should be legal (regardless of the fact that many others view gay marriage as immoral). Additionally, supporters likely believe marriage to be primarily a private or personal act. Presumably many gay people would desire to engage in the act of marrying without a public reprisal, despite the fact that the records would be made public. Vicki Huebner, Assistant Dean, donated to the Yes on 8 Campaign, an act which she presumably believed to be morally right, which was legal, and which she may well have considered a private and personal choice, despite the records being public. Many current and former students viewed this act as immoral, or as "outright discrimination." Despite the similarities mentioned above between Huebner's act and the gay couples wishing to marry, many current and former students have thrown a pitiful \$125 donation into the public spotlight and are crying for Huebner's blood. I for one prefer a world, and a school, in which people can do such acts (those which others in society see as wrong and immoral) without facing such a hostile public outcry.

The issue of gay marriage is heated, too heated. I am a born again Christian -- and passionately believe that every gay couple should have the legal right to choose to marry. Common ground exists on this issue, but we will not find it by going for the jugular, or as the Editor of *The Advocate* suggests -- by "fighting loudly." This issue will be solved not by screaming, but by listening and understanding. I support "refreshing the tree of liberty from time to time with the blood of patriots and tyrants," but in this case, both the patriots and the tyrants are everyday people. As long as either side is willing to publicly chastise private citizens for their moral position, the issue will stay heated and the solution elusive. For those of you who would call for Dean Huebner's resignation, imagine how you would feel if a private school attempted to discharge one of its Deans for making a small contribution to the No on 8 Campaign.

I believe the big problem with the gay marriage issue is that everyone is afraid of what the "stamp" of government approval will mean. If gay marriage becomes legal, then government authorization of, in certain moral views, an immoral act will send the wrong message and our kids will be taught about it in schools. If gay marriage remains forbidden then homosexuals are made a subclass of citizens with limited rights. Both are legitimate fears, but both can be mitigated.

I was frustrated by the article in *The Advocate* because it refused to consider the opposing side's view point. However this refusal to see the other side too commonly exists on both sides of the gay marriage issue. Quotes such as, "[r]egardless of how one thinks about gay marriage, Dean Huebner's contribution to eliminate the rights of the students she must assist is disgraceful" indicate a failure to understand the viewpoints of Prop. 8's supporters. No supporter would see Huebner's donation as "disgraceful." This failure to understand or even try to understand has turned the issue into a war: one where neither side sees a common ground and that will be fought out to the bitter end. Despite *The Advocate's* call to "Pick up the fight, and if its for something you truly believe in, do so loudly," maybe we should put down the fight and "give peace a chance," as they say.

The article also quoted that, "[w]hen she [Huebner] does something in her capacity, she might put some people at a disadvantage. It's one thing to vote

yes on Prop. 8, but when people's careers and futures are in your hand, that's something else." Again, this quote exhibits the viewpoint of war, that everyone out there is either a friend or an enemy, with Huebner falling on the enemy side of the line. That is simply not the case. This is no war: it is not a black and white issue with only two opposing views, one good and one evil. There are a myriad of views on the issue. There is a difference between genuine bigotry and support of Prop 8. Yes, there is a difference. Many people believe in equal rights for gay couples, but think the word "marriage" should not be used. Others have no problem with gay marriage, but are troubled by a gay couple's ability to adopt. (These two viewpoints each came from very liberal democrats). Some would be happy with a type of civil union that granted the same rights as marriage. Others regard using a different label for homosexual couples to be fundamentally unacceptable as a type of "separate but equal" solution. If both sides of this issue insist on battle, and refuse peace -- to reasonably negotiate out a common ground - then we may all end up bloody.

This is no war: it is not a black and white issue with only two opposing views, one good and one evil.

**My Solution.** The government should not be deciding morality for the people, as long as it does the morality of the majority will reign. This will mean no gay marriage in California, and many other states. We ought to leave moral choices to each individual's own personal or spiritual journey, and let the government decide what is legal. On the issue of marriage, let's get the State out of it completely. They can certify all couples who desire as "joint taxation and inheritance units" or some other mundane title. After all, does anyone really care if me and my [wife / husband / brother / heterosexual life partner / girlfriend] want to file joint tax returns, be the default to inherit each others' estates in intestacy, and all the myriad of legal differences be-

tween marriage, domestic partnership, and roommates? (Even hard core, bible thumping, "homosexuality is immoral" believing people really don't care if two guys get to file a joint tax return, trust me on this, I know some Bible thumpers.)

Under my proposal, the State would certify any two people as a "Joint Taxation Unit," though only two at a time, and only one "joint taxation and inheritance unit" per person at a time. The state will certify a "unit" on presentation of a marriage certificate, issued by ANY private organization. This will allow churches to marry who they see fit, other churches to marry who they see fit, ship captains to marry who they see fit, lawyers and marriage services to marry as they see fit, and for me to marry who I see fit.

This solution will provide benefits for both sides. Gay couples will enjoy an equal status under the law as straight couples. Religious types can marry under rules they prefer. I remember a huge outcry when the state's marriage laws were changed to allow for no fault divorces, this "immoral" law could be done away with for those who so choose. And, as far as the children, maybe teachers should teach math and grammar and parents and family should teach about marriage and morality.

Remember, "we are not enemies, but friends, we must not be enemies." If anyone does not approve of my viewpoint on the heated gay marriage issue, I will make clear right now that I am not going to resign from the school, and will decide whether to continue attending LCS meetings solely by assessing the quantity of the pizza provided and the quality of the information I receive.

(continued from page 10)

**Dear Editor:** In the last Advocate you wrote an article on the fact that Dean Heubner donated money to the Yes on Prop 8 cause. In your article you managed to get eight statements from current and former Santa Clara Law students as well as faculty. Seven of these statements were extremely negative toward Dean Heubner, including one statement made by the president of the Santa Clara ACLU chapter calling for the Dean Heubner's resignation. The ACLU prides itself on defending a person's right to the First Amendment no matter how vile that speech may be, as evidenced by the defense of NAMBLA and neo-Nazis. Yet at Santa Clara the ACLU does not come to the defense of a person's freedom of speech, the ACLU joins in the suppression of speech that they do not agree with.

The only statement in support of Dean Heubner was made by Dean Polden, defending her on her record. I feel journalistic integrity would compel you to write an article that was balanced and you would seek out students who would support Dean Heubner's right to free speech. I only wonder if you would have written a similar article if it came out that a faculty member donated money to a group that was responsible for domestic terrorism, like A.L.F. For some reason I have a feeling your opinion there would have been in support. And just for the record I voted no on prop 8, but actually believe in free speech.

~ Andrew Cross, 3L

## Editor's Response:

Caitlin E. Robinett  
Editor-in-Chief

# This is Why I'm Hot/Heated

Martin Luther (the priest, not the civil rights activist) once said, "You are not only responsible for what you say, but also for what you do not say." Keeping with the theme of responsibility for this issue, I feel like I have a duty to respond to both the signed Letters to the Editor (thank you), and the anonymous trash and rumors I heard surrounding the article, *Assistant Dean's Support of Prop 8 Sparks Controversy*.

Although I feel I no duty to offer an explanation, the purpose of the article was to bring to light a current controversy involving a group of students who felt targeted because of a public donation. The article was not meant to "out" the donation in anyway, it was already a matter of public record. I did not bring the matter to BGLAd or any alumni's attention. The article was intended to inform the rest of the campus of the existing controversy. I reported on the parties that were involved, the angry students and the supportive administration. It would not have made sense for me to interview students who weren't aware, and consequently, didn't care about the donation. But now that more students are aware of the issue, I'd be happy to print all opinions on the subject.

That being said, I tried my best to stay neutral in my news article. But since I have been personally attacked, I want to thank those of you who have driven me to pick up the fight. I am not ashamed to say I am angry. If thought that you saw opinion from me before, we obviously haven't met.

It's ridiculous to say I don't know anything about free speech. This is exactly how free speech works. This newspaper is our vehicle for the marketplace of ideas. This is exactly why political donations are made public. Because you absolutely have a right to donate to whoever or whatever cause you wish. But then other people have the right to question your integrity when you do so. We should not legislate someone's thoughts or beliefs. But the point of free speech is for it to be heard. And the reason we want it to be heard is so that people can either agree or disagree and tell you why. It's so that we can actually try to learn something from each other.

Brian, you know I respect you, but you pulled quotes out of a completely different article to make me sound more involved in the Prop 8 article. And since when are you the authority on keeping your mouth shut?

No, I don't think I will. Because what worries me more than my children learning about gay marriage in schools is the inevitable reality of them learning about a history of their country where we didn't learn from our mistakes, but we continued to discriminate against minorities. They will

learn that our state voted to take away rights that had already been given to a protected class of individuals. But I will be able to tell them that I was ashamed of it.

This is who I am. These are my opinions. This is my speech. If you want to say something, write a "Letter to the Editor." Tell me I'm wrong, but give a valid reason. If you think that I am speaking inappropriately, ask for my resignation. Let me print your opinions. But please, have the courage to sign your name. I want to have it on record when I am teaching my children to stand up for the things they believe in.



# ENTERTAINMENT

## Catching Up With Santa Clara Law Students

Daniel Zazueta  
Entertainment Editor

### Do you like like using “like?”

A 2L, who shall remain anonymous, sent seasoned professor Cynthia Mertens to the hospital last Wednesday night after using “like” fifteen times in a sentence before making a point. The student’s mesmerizing flurry of “likes” in her dizzying account of a hypothetical caused Professor Mertens to collapse into a heap on the floor while sitting in on Angelo Ancheta’s Constitutional Law II class. Professor Mertens was documenting how many students began their statements with “I was just gonna say . . .” when the student’s barrage of “likes” sent Professor Mertens into a fit in the back row. The student was the first to come to the convulsing professor’s aid. She made matters worse, however, when she asked “Like, oh my God. Are you like okay?”

### Will Bluebook for Food

3L Brian Skarbeck was seen last week at the 880 off ramp on the Alameda holding a sign that read “Will Bluebook for Food.” The sad sign of the times (no pun intended) really sheds light on how the economic crisis is affecting law students. Luckily Skarbeck has exquisite Bluebooking skills that come in handy for the steady stream of attorneys heading toward downtown San Jose. Skarbeck stated “Yeah, it’s pretty rough out here, but I made like \$20 in peanut butter Clif Bars yesterday for one citation. Some guy needed to cite to a Chinese Economic Contract Law source. The translation took me a couple hours, but hey, times are tough.”

### Obama’s Inaugural Balls were Hot and Sweaty

1L Dominc Dutra reported back after a thrilling week in Washington D.C. that Obama’s Balls were not only expensive, but also hot and sweaty. Dutra said “Anytime you get Beyoncè in the mix, things get pretty hot. The President had sweat dripping off his brow during Beyonce’s rendition of ‘At Last.’” Dutra expressed happiness for having seen the President’s Balls. He reflected on his experience, “Sweaty Balls are better than no Balls at all. I would definitely do it again.”

### Motivational Speaker Flakes out on Motivation Speech

5L Nick Webber was scheduled to give a lunchtime speech last week on motivational skills, but failed to show up. Apparently, Webber had been up all night watching an Avril Lavigne marathon on VH1 and slept through his alarm. When asked about what his speech was about Webber laughed. “It’s easy bra, you just need to apreesh the sitch you get into and, ya know, nail it.” The Advocate asked Webber about when he thought he might be graduating. Pulling his hair up to the sky, Webber retorted “In probs like two or three semests.” He told us he forgot about the speech, but would be happy to give one “whenevs.”



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ESTOPPEL	EASEMENT	CONSTITUTION	PEREMPTORY
PROPENSITY	CHATTELS	REASONABLE	ADVOCATE
DICTA	CONSIDERATION	REPLEVIN	VOIRDIRE
ADMINISTRATRIX	BREACH	VERDICT	DEMURRER
ENJOIN	PENAL	HEARSAY	WAIVER